



Concept Paper on Limited Liability Partnerships

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Financial Services Commission

04 March 2013

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1.0 Introduction

The purpose of this paper is to analyse those jurisdictions which have adopted Limited Liability Partnerships (LLPs) and determine whether there is a need for the introduction of LLP in Mauritius. Research has shown that many countries like the United Kingdom, Singapore, United States, Jersey, India and Panama, amongst others, have implemented a legal framework for the regulation of LLPs.

This paper presents the concept of LLP, analyses those jurisdictions where LLP has been introduced, those where it has been turned down and the reasons why, the specificity of the Mauritian context along with the relevance of LLP, the best model to choose for Mauritius, the safeguards in the regulation of LLP and the list of issues to consider when opting for the introduction of LLP in Mauritius.

Finally, the concept paper concludes on the way forward.

2.0 What is LLP?

A limited liability partnership is a business structure that operates similar to a partnership organisational structure. The difference is the limited personal liability afforded to each member of the LLP. However, each partner is responsible for their own actions while conducting business. Each partner in a LLP has an equal role in the decision-making process of the business as well as equal shares in the company's profits and losses. Generally, businesses formed under this structure will have the acronym LLP attached to their names. Not all businesses are eligible to operate LLPs and some jurisdictions limit their formation to certain professions. In such jurisdictions LLPs are tailored for professionals, such as doctors, lawyers and accountants. Partners form their business as an LLP to take advantage of its limited liability protection as well as the taxation benefits afforded to partnership businesses. Also, states may require annual filings from LLPs to update their information.

3.0 Jurisdictions where LLP has been introduced

This section gives an overview of the legislative framework of the main countries where LLP has been introduced. The overview is categorized starting with the most commonly benchmarked jurisdictions such as UK and US. Singapore is considered given that it draws on both the US and UK models of LLP. Also, it is appropriate to consider India as many investments are channeled into India through Mauritius. Moreover, Jersey and Panama are also looked at since these jurisdictions being offshore centres were considered for the Limited Partnerships Act. Japan is also considered given that its legal framework is relatively new and is similar to the LLP form adopted by some countries in America and Europe. It should be noted that South Africa has not adopted a

specific legislation on LLP but there are some provisions in its Companies Act which introduces this concept. On the other extreme, it might be useful to highlight that Isle of Man has no specific legislation or other legislative provisions on LLP.

Item	Jurisdiction	Legislation	Short Notes
1.	United States ("US")	The Revised Uniform Partnership Act (1997) is a standard statute adopted for the governance of business partnerships by U.S. States.	In the US, each individual State has its own law governing the formation of Limited Liability Partnerships. However, although specific rules vary from state to state, all States have passed variations of the Revised Uniform Partnership Act.
2.	United Kingdom ("UK")	Limited Liability Partnerships Act 2000	<p>LLPs are governed by the Limited Liability Partnerships Act 2000 (in Great Britain) and the Limited Liability Partnerships Act (Northern Ireland) 2002 in Northern Ireland.</p> <p>A UK LLP is a corporate body - that is to say, it has a continuing legal existence independent of its members, as compared to a Partnership which may (in England and Wales, does not) have a legal existence dependent upon its membership.</p> <p>A UK LLP's members have a collective ("Joint") responsibility, to the extent that they may agree in an "LLP agreement", but no individual ("several") responsibility for each other's actions.</p> <p>As with a limited company or a corporation members in an LLP cannot, in the absence of fraud or wrongful trading, lose more than they invest.</p> <p>In relation to tax, a UK LLP is similar to a partnership: it is tax transparent or pass-through, that is to say it pays no UK tax but</p>

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			<p>its members do in relation to the income or gains they receive through the LLP.</p> <p>No requirement for the LLP agreement to be in writing because simple partnership-based regulations apply by way of default provisions.</p> <p>The LLP structure is commonly used by accountants, as a company may not act as auditor to another company. LLPs are also becoming more common by firms in the legal profession such as solicitors and patent attorneys that by law are prohibited incorporating as companies.</p>
3.	Singapore	Limited Liability Partnerships Act 2005	<p>The Limited Liability Partnerships Act 2005 draws on both the US and UK models of LLP, and like the latter establishes the LLP as a body corporate. However for tax purposes it is treated like a general partnership, so that the partners rather than the partnership are subject to tax (tax transparency).</p>
4.	India	Limited Liability Partnership Act 2008	<p>The Limited Liability Partnership (LLP) is governed by Limited Liability Partnership (LLP) Act, 2008 and Limited Liability Partnership Rules, 2009. The LLP Rules, 2009 contains administrative provisions for the formation, management, reconstruction and winding up of LLPs. Central Government can make applicable any provision of Companies Act to LLP with suitable modifications by issuing a notification. The Indian Partnership Act, 1932 shall not be applicable to LLPs.</p> <p>Key features of LLP Act are as follows:</p> <ul style="list-style-type: none"> - LLP shall be a body corporate and a legal entity separate from its partners. It will have perpetual succession; like a corporation; - There shall not be any upper limit on number of partners in an LLP unlike an ordinary partnership firm where the maximum number of partners cannot exceed 20 (10 in case of banking); - While the LLP will be a separate legal entity, liable to the

Item	Jurisdiction	Legislation	Short Notes
			<p>full extent of its assets, the liability of the partners would be limited to their agreed contribution to the LLP. Further, no partner would be liable on account of independent or unauthorized actions of other partners, thus allowing individual partners to be shielded from joint liability created by another partner's wrongful business decisions or misconduct;</p> <p>- The framework of LLP is not restricted to professional services alone. Several business activities can be undertaken using the LLP structure.</p> <p>Pre-requisites for registering an LLP</p> <ol style="list-style-type: none"> 1. Minimum 2 Partners (Individual or body corporate) 2. Minimum 2 Designated Partners who are individuals and at least one of them should be resident in India. 3. Digital Signature Certificate 4. LLP Name 5. LLP Agreement 6. Registered Office
5.	Jersey	Limited Liability Partnerships (Jersey) Law 1997	<ul style="list-style-type: none"> • An LLP is a legal person distinct from its partners • An LLP has all the powers of a natural person • No limit on the number of partners in an LLP. Partners may be companies, individuals or LLPs. All partners are entitled to participate in the management of the LLP without this affecting their liability • An LLP will come into existence on the filing of a declaration together with the appropriate registration fee and the issue by the registrar of a certificate of registration of the declaration. The declaration must name all the partners and specify that one or more of them is to be a designated partner. The designated partner(s) must notify changes of the partners to the registrar, make annual declarations naming all the partners and maintain the partnership books and records • An LLP must make annual declarations but there is no obligation to file the partnership agreement or accounts.

Item	Jurisdiction	Legislation	Short Notes
			<p>An LLP's accounts need not be audited</p> <ul style="list-style-type: none"> • No restrictions on an LLP making distributions to its partners • Although LLPs have legal personality, the Jersey tax authorities will treat them as partnerships for tax purposes. Unless the LLP's income arises in Jersey or one or more of its partners is resident in Jersey, no Jersey tax will be payable • An LLP will not be dissolved as a result of the admission of new partners or the retirement of existing partners, unless the terms of the partnership agreement require this, but if the number of partners falls below two or the LLP is declared to be bankrupt the LLP will be automatically dissolved. The Jersey court will also have power to order the dissolution of an LLP.
6.	Panama	Limited Liability Partnership Law 1966	<p>There is a business entity under Panama law which could be referred to as a Limited Liability Partnership.</p> <p>Limited liability partnerships are required to have at least 2 partners and can have not more than 20. All the partners or their attorneys-in-fact, as the case may be are required to execute the partnership agreement.</p>
7.	Japan	Limited Liability Partnership Act	<p>The Japanese limited liability partnership is a relatively new Japanese entity form that was introduced in 2005.</p> <p>Formed by the 'Law Concerning Contracts for Limited Liability Business Partnerships' and similar to the LLP form adopted by some countries in America and Europe, the LLP form is intended to be used by entrepreneurs or specialists for who are providing services in the fields of accounting, legal, design, IT, financial or similar knowledge based areas.</p> <p>Characteristics of the LLP entity form</p> <ul style="list-style-type: none"> • Limited liability for contributors of capital to the LLP ('LLP Members') up to the amount of their contribution.

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			<ul style="list-style-type: none"> • Internal governance: The LLP Members themselves carry on the management of the LLP business, with flexibility to decide how profits and losses should be allocated between different LLP Members. • Taxation at the member level: LLP Members are taxed directly on the results of the LLP, avoiding double taxation through the imposition of corporate taxes at the LLP entity level. <p>It is to be noted that some part of the business of lawyers, certified accountants, or qualified tax accountants cannot be carried out in LLP form and hence remains subject to unlimited liability.</p> <ul style="list-style-type: none"> • The LLP is under an obligation to respond to requests for disclosure of the partnership contract and the financial statements of the LLP to creditors. • Measures to preserve the assets of the LLP include limitations on the type of capital that can be contributed to an LLP at the time of its establishment (LLP law article 31), responsibilities for the contribution of LLP members (under LLP law article 16), limitations on the types of contributions (under LLP law article 119), an obligation to separate the management of the assets of the partnership (under LLP law article 20), a prohibition on the transfer of claims against the intrinsic assets of each member to be compulsory transferred as a claim against the assets of the partnership (under LLP law article 22), and limitations on the distribution of partnership assets (under LLP law article 34). • Article 49 of the LLP law requires preferential settlement of debts of the partnership prior to the distribution of assets to members of the LLP even at the time of liquidation along with other methods of preserving creditors' interests. • The LLP law does not determine the detailed provisions of the internal rules of the LLP. Rather,

Item	Jurisdiction	Legislation	Short Notes
			<p>these are determined by the LLP Members themselves in agreement under the LLP contract.</p> <ul style="list-style-type: none"> • The LLP Law requires all the LLP Members to participate in the carrying out of the LLP business and in the important decision-making activities of the business. • It is not unusual for an LLP to raise borrowings at the time of its establishment to add to the contribution of the LLP Members. However in order to prevent inappropriate tax loss recognition and related tax avoidance, funds only investing for monetary return and not participating in the business are forbidden. Furthermore under LLP article 12 relating to such financing, either the agreement of all members of the LLP is required or, if a rule is established in the LLP contract, a majority of at least two thirds of the total number of LLP members. • It is clear from the individual income tax and corporate tax instructions that the Japanese taxation of an LLP is the same as that of a Japanese nin'ikumiai or civil law partnership.
8.	South Africa	<p>No legislation for LLP identified</p> <p>Persons practising in professions, such as attorneys and accountants who are otherwise unable to enjoy limited liability typically make use of section 53(b) of the Companies Act. Companies incorporated under section 53(b) are identified by the suffix "Incorporated" or "Inc". Certain interest groups are currently lobbying for the introduction of limited liability partnerships.</p>	
9.	Isle of Man	No legislation for LLP identified	

4.0. Reasons why some jurisdictions have not adopted LLP

From our research we have noted that some jurisdictions have not adopted the LLP as a business structure. These are Isle of Man, BVI amongst others. Some jurisdictions have pondered quite lengthily over its advantages and disadvantages before taking a decision. Mauritius may decide to follow suit in that respect.

Some of the reasons for the past wariness were as follows:

- i. The idea of limited liability was controversial when it was introduced as it was feared that limited liability would erode standards of accountability.
- ii. The general view was that a general partnership is very different from a limited liability company in the sense that investors in a partnership are experienced professionals who should know what they are doing and they have unlimited liability.
- iii. David Cay Johnston, a tax expert, wrote that the introduction of limited liability provisions in the US ‘took away the most powerful incentive for self-policing by the corporate professions of law and accounting’ and ‘help explain the wave of corporate cheating that swept the country’.
- iv. It was thought that when LLPs were introduced in the US (which was as from 1991 in Texas), less time were allocated to each audit and quality suffered.
- v. Audit failures lie behind most great corporate scandals: Enron, WorldCom and most of the collapses behind the latest financial crisis. Because of the extreme dangers bad audits pose to corporate capitalism, governments try to regulate this profession with extra care. Hence the fear of granting them limited liability.
- vi. Because of the above reasons, in 1995, when Price Waterhouse (now PricewaterhouseCoopers) and their legal advisers made proposals for the introduction of LLPs in the UK, the UK rejected the proposition as the UK wanted its jurisdiction to appear clean and transparent and wanted the world to trust them. The argument was that if it is impossible to sue auditors, that makes it harder to look clean.
- vii. In his book entitled “Treasure Islands”, Nicholas Shaxson explained how, in 1996, the concept of LLP was introduced in Jersey. The strategy of accountants was to introduce the concept of LLP offshore and then threaten the UK to relocate there if they refused to pass their own legislation. They approached the Isle of Man and Guernsey first but the latter refused. Then they approached Jersey which accepted. It seems that their strategy worked as the UK also adopted a Limited Liability Partnerships Act in 2000. Guernsey also will adopt a similar legislation shortly.

5.0 Reasons why jurisdictions have adopted LLP

In the United States the main reason why the LLP was introduced was to shield innocent members from liability. The limited liability partnership was formed in the aftermath of the collapse of real estate and energy prices in Texas in the 1980s. This collapse led to a large wave of bank and savings and loan failures. Because the amounts recoverable from the banks were small, efforts were made to recover assets from the lawyers and accountants that had advised the banks in the early 1980s. The reason was that partners in law and accounting firms were subject to the possibility of huge claims which would bankrupt them personally, and hence the first LLP laws were passed to shield innocent members of these partnerships from liability.

Moreover LLPs have many of the same advantages as limited partnerships, with the added benefit that the members of an LLP can take an active role in the business of the partnership without exposing themselves to personal liability for the acts of their other partners beyond the value of their investment in the partnership.

In Japan there was a large-scale revamp of the country's laws governing business organizations in 2006. It was in this context that the Limited Liability Partnership was introduced. Japanese LLPs may be formed for any purpose (although the purpose must be clearly stated in the partnership agreement and cannot be general), have full limited liability and are treated as pass-through entities for tax purposes. However, each partner in an LLP must take an active role in the business, so the model is more suitable for joint ventures and small businesses than for companies in which investors plan to take passive roles. Japanese LLPs may *not* be used by lawyers or accountants, as these professions are required to do business through an unlimited liability entity.

In the United Kingdom the LLP structure is commonly used by accountants the reason being that a company may not act as auditor to another company. Firms in the legal profession such as solicitors and patent attorneys are by law prohibited from incorporating as companies and therefore they tend to adopt the LLP structure.

5.1 Useful Vehicle

LLPs are useful vehicles. They are often used in tax planning and financial structuring and may be suitable for a group of people engaging together in a property or finance venture. They are also considered as tax-efficient vehicles for international trade.

The benefits of using a LLP to hold new investment properties are:

- Tax transparent i.e., avoiding double tax charge to income and gains;
- Flexible in respect of investors' income and capital shares and;

- Offers similar protection to that of a company (separate legal personality, limited liability protection)

5.2 Flexible Legal Structure

LLPS are flexible legal structures. In order to set up an LLP there must be two or more Partners. These can either be individuals or other legal entities, such as another company or another partnership.

Partners can enter and leave the LLP easily without collapsing the structure.

Moreover, there is usually no legal requirement to have board meetings, or make decisions by committee as the internal workings of the LLP are left to the discretion of its Partners. This facilitates informal and flexible decision making.

5.3 Limited Liability Protection

Because they offer limited liability, LLPs are vehicles used to protect partners from the risk of carelessness or accidental negligence of a colleague.

In a regular partnership, each partner is responsible for the debts of the business even if the debts were created by another partner. If the business does not have the funds to cover the debts, the personal assets of a partner may be used to repay them. Limited liability partnerships set limits on the personal liability that can be placed on any partner, sparing their personal assets from collection attempts. Should a lawsuit be filed against a limited liability partnership, the LLP is viewed as a distinct legal entity that is separate from the partners who form it. Judgments rendered against the LLP do not carry over to the personal assets of the partners.

All partners in an LLP enjoy limited liability from business obligations and wrongdoing by the other partners. This is particularly important for professionals so that one professional in the partnership is not held responsible for malpractice committed by another partner and is mostly appropriate for a partnership where some partners are not actively involved in the business. Creditors are limited to the assets of the business and cannot pursue the personal assets of the partners.

It does not serve the public interest to expose professionals to liability for the malfeasance of their partners or employees. They should be given appropriate protection.

5.4 Suitability for professionals

LLPs are appropriate for professionals as they offer the opportunity for all partners to help manage the Business. The partners are directly involved in the activities of the LLP.

In limited partnerships, partners with limited liability cannot help manage the business. To keep their liability shields, their involvement with the business must be as passive investors. The LLP business structure, by comparison, gives all partners limited liability while allowing them all to manage the business in the same way as if the LLP were a general partnership.

Many legal business structures cannot be used by groups of professionals, such as accountants and attorneys, due to the nature of the work that they do. Limited liability partnerships do allow professionals to create them, and in some countries may only be created by professionals.

5.5 Pass-Through Income

Income made through an LLP passes through the company directly to the partners who are members of it. This prevents double taxation that occurs with other business entities, such as corporations and allows partners to pay taxes only once, directly on their personal income tax returns.

Nowadays, to decrease the bad consequences of LLPs, some countries have introduced conditions and restrictions in their legislations for the use of LLPs. For instance, in US, some states restrict the use of the LLP structure to professionals, such as lawyers and accountants. In states that restrict the use of LLPs, the partners must be licensed members of an approved profession before they can set up their business as an LLP.

Other States restrict the amount of liability protection that the LLP provides its partners.

The limit of an individual partner's liability depends on the scope of the state's LLP legislation. Many states provide protection only against tort claims and do not extend protection to a partner's own negligence or incompetence or to the partner's involvement in supervising wrongful conduct. Other states provide broad protection, including protection against contractual claims brought by the partnership's creditors.

For example, Minnesota enacted an expansive LLP statute in 1994. This piece of legislation provided that a partner in an LLP was not liable to a creditor or for any obligation of the partnership. It further provided, however, that a partner was personally liable to the partnership and co-partners for any breach of duty, and also allowed a creditor or other claimant to pierce the limited liability shield of a partner in the same way a claimant may pierce the corporate veil of a corporation and personally sue an individual member of the corporation.

In states that recognize LLPs, a partnership qualifies as an LLP by registering with the appropriate state authority and fulfilling various requirements. Some states require proof that the partnership has obtained adequate liability insurance or has adequate assets to satisfy potential claims. All states require a filing fee for registration and also require that an LLP include the words *Registered Limited Liability Partnership* or the abbreviation *LLP* in its name.

In Canada, for lawyers and paralegal licensees to form an LLP, conditions as follows should be satisfied:

- Section 61.1 of the *Law Society Act* permits lawyers and paralegal licensees to form limited liability partnerships for the purpose of practicing law or providing legal services;
- Part I of By-law 7 requires that a limited liability partnership maintain professional liability insurance coverage for each partner in accordance with By-law 6. By-law 6 details individual insurance requirements for lawyers and paralegal licensees. Therefore, a limited liability partnership is required to ensure maintenance of individual insurance coverage for each of its partners in the amount required for individual licensees as prescribed under By-law 6; and
- The Partnerships Act requires that a limited liability partnership register its name under the Business Names Act and that the name include the words "limited liability partnership" or "société à responsabilité limitée" or the abbreviations "LLP", "L.L.P." or "s.r.l." as the last words or letters of the firm name.

6.0 Specific safeguards to be considered for the regulation of LLP

The introduction of the LLP as a business structure has to be consistent with the maintenance of a competitive and up-to-date legal framework for doing business both within and without the jurisdiction itself. Appropriate safeguards in the legislation have to be provided to maintain a balanced approach towards the adoption of a legal regime for LLPs.

These include:

(i) The requirement that the LLP utilize appropriate words to advertise its status : the name of a limited liability partnership must end with the expression "limited liability partnership", or the abbreviation "llp" or "LLP".

(ii) The requirement that the LLP be registered, with its requisite records being kept up-to-date. A Limited Liability Partnership is an entity created by the Law and pursuant to registration under the Law. It has the protection of the law for so long as and only whilst it is registered. Also it is important that up-to-date books of accounts are kept so as to substantiate all the transactions and

financial position of the LLP. Accounting and other financial records need to be maintained for 7 consecutive years.

(iii) The requirement that the LLP render financial disclosure equivalent to that required of companies. Like in the UK an LLP must file annual accounts with the Registrar of Companies; these must be audited if the annual turnover exceeds GDP 1 million.

(iv) Provision for members of the LLP to be sued for wrongful and fraudulent trading. If the Members of a LLP (a) allowed the LLP to continue trading after they knew (or ought to have known) that it had no reasonable prospect of avoiding insolvency; or (b) allowed it to continue trading with a view to defrauding creditors, they may be personally liable.

(v) Regulations for dealing with insolvency as well as winding-up of the LLP.

(vi) 'Clawback' provisions: members of the LLP may be subject to a clawback inasmuch as the liquidator may apply to the court to recover withdrawals of property of the LLP made by a member within two years prior to the winding-up when the member concerned knew or had reasonable grounds for believing that the LLP was insolvent or would be made insolvent by the said withdrawal.

(vii) Requirement of a bond: Jersey can be cited as example here - where a Limited Liability Partnership has to maintain arrangements with one or more banks or insurance companies to pay £5 million to the person responsible for winding up the affairs of the Limited Liability Partnership upon its dissolution, for the benefit of creditors of the Limited Liability Partnership.

7.0 Specificity of the Mauritian context

Mauritius is a mixed common law / civil law jurisdiction. The business structures that are legally permissible are derived and adapted from both civil law and common law jurisdictions – e.g company / trust from common law while 'societe' is from civil law. This mixed legal system implies that there are more types of business structures available and that there is room for new business vehicles so long as these can be accommodated in the existing system.

Whilst Mauritius is a relatively small country its professional service providers are quite numerous. There are some accountants who are regrouped into firms but these are only a few (around 10 with more than two partners and all Big 4 international firms are present in Mauritius). Most lawyers and other legal professionals like attorneys and notaries are independent and not associated as partners.

Given that Mauritius is an International Financial Centre, another issue to be considered is whether the LLP structure should be extended to foreign professionals also. As per the author

Nicholas Shaxson, it seems that the concept “LLP offshore” was introduced in Jersey in 1997. Allowing a LLP to hold a Global Business Licence may attract more business to Mauritius given that our treaty network is expanding and Mauritius is positioning itself as a gateway to Africa. However, if we adopt such a stance, we need to ensure that the LLP conducts business outside Mauritius in order to meet the GB Test.

Another aspect which might be taken into account is whether Mauritians could partner with foreigners just like the International Law Firms doing joint ventures with Mauritius Law Firms.

8.0 Choosing a LLP Model for Mauritius - guidance from certain Jurisdictions

In choosing the best model for Mauritius, guidance has been sought from those countries with which Mauritius shares certain affinities, notably the common law heritage, the cultural background and the fact that, like Mauritius, these jurisdictions have already established themselves as international financial centres of repute.

The United Kingdom has always been a source of inspiration for Mauritius given that most of our laws originate from common law. Singapore is a well-established international financial centre and has been considered in this analysis given that it draws on both the US and UK models of LLP. On the other hand, Jersey, another international financial centre of repute has demarcated itself in this analysis considering that it is the only country which has opted for a specified financial provision to compensate creditors against debts and liabilities of the partnership. Finally, India has been selected given that most of the investments into India are channelled through Mauritius and Mauritius and India share cultural affinities.

Criteria to be considered	United Kingdom	Singapore	Jersey	India
Separate legal entity	√	√	√	√
Limited liability to all partners	√ However, there are certain circumstances in which the personal liability of a Member	A partner during the course of the business is personally	The maximum amount that a partner in a Limited Liability	Liability of the partners is limited to the extent of their

Criteria to be considered	United Kingdom	Singapore	Jersey	India
	<p>may be extended. These include:</p> <ul style="list-style-type: none"> • Negligence • Wrongful/Fraudulent Trading • Insolvency Clawbacks • Personal Guarantees 	<p>responsible for liabilities that arise due to his act of commission, omission, or negligence. Claims for liabilities can be made against him and his personal assets.</p>	<p>Partnership could lose if judgment were to be made against the Limited Liability Partnership would be his interest in the property of the Limited Liability Partnership together with certain amounts paid to him from its property if it was, at the time, insolvent.</p>	<p>contribution in the LLP. No exposure of personal assets of the partner, except in cases of fraud.</p>
<p>Partnership Agreement - optional</p>	<p style="text-align: center;">√</p>	<p style="text-align: center;">√</p>	<p style="text-align: center;">√</p>	<p style="text-align: center;">√</p>
<p>Taxability of the LLP</p>	<p>No tax is payable by the LLP itself, instead, the UK tax authorities will look to the respective partners in assessing liability to UK tax.</p> <p>If the members of the LLP are non-resident and the income of the LLP is non-UK</p>	<p>For tax purposes the LLP is treated like a general partnership so that the partners rather than the partnership are subject to tax.</p>	<p>Although LLPs have legal personality, the Jersey tax authorities will treat them as partnerships for tax purposes. It will hence be fiscally transparent i.e. tax is levied on</p>	<p style="text-align: center;">√</p> <p>LLPs are taxable under the Limited Partnerships Act 2008 and the Indian Income Tax Act and are treated as a separate legal entity.</p>

Criteria to be considered	United Kingdom	Singapore	Jersey	India
	<p>source, then the LLP and its members will not be subject to UK taxation.</p>		<p>the individual partner's share of profits rather than the overall partnership profit. Unless the LLP's income arises in Jersey or one or more of its partners is resident in Jersey, no Jersey tax will be payable.</p>	<p>A new levy called alternate minimum tax (AMT) has been specifically introduced for LLPs to plug the revenue leakage under the income-tax act, and is effective from April 1, 2011 for financial year 2011-12 and assessment year 2012-13.</p>
<p>Accounting and filing requirements</p>	<p style="text-align: center;">√</p> <p>Annual accounts need to be filed with the Companies House.</p> <p>The annual accounts must be audited if the annual turnover exceeds GBP 1 million</p>	<p style="text-align: center;">√</p> <p>The LLP is required to keep such accounting and other records as will sufficiently explain the transactions and financial position of the LLP. The LLP is not required to prepare profit and loss account or balance sheet or to have them audited if they were</p>	<p style="text-align: center;">√</p> <p>LLPs have to make annual declarations naming all the partners and maintain the partnership books and records. However there is no obligation to file the accounts or to have the accounts audited. LLPs must maintain proper</p>	<p style="text-align: center;">√</p> <p>The LLP shall be under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar</p>

Criteria to be considered	United Kingdom	Singapore	Jersey	India
		prepared.	accounting records.	every year. The accounts of LLPs shall also be audited(if the contribution of the partners exceeds Rs 25 lakhs or annual turnover exceeds Rs 40 lakhs), subject to any class of LLPs being exempted from this requirement by the Central Government.
Restriction of LLP to certain professions only	The LLP structure is open to all types of business in the UK	The Act provides that any individual or body corporate may be a partner in an LLP	LLPs are open to any person who is willing to contribute effort and skill to the business of the LLP.	Any individual or a body corporate may become a partner in a LLP provided the said person is of sound mind, is not insolvent and has not applied for adjudication for insolvency.
Minimum of 2 partners,	√	√	Any number of persons may be	√

Criteria to be considered	United Kingdom	Singapore	Jersey	India
no maximum limit			partners in a limited liability partnership.	
Creditors protection	√	√	√	√
Insolvency clawback	√	√	√	

9.0 Main Features and Characteristics of LLPs

Every Partner Equal

Each partner is an equal member in a LLP. They decide together on various issues, such as the name of the business, where it is located and how it is going to be operated. Partners also share equally in the profits and losses of the business. Like a general partnership, there are no limits to the number of partners a LLP can have.

Limited Liability Protection

Each partner in this type of vehicle is protected against the actions of the other partners which results in a lawsuit. For example, if one partner is subject of a malpractice claim and loses in court and have to pay damages, the other partners are not held financially responsible. However, partners in a LLP are liable for the obligations of the LLP such as loans used to purchase equipment and utility expenses. Due to the liability protection afforded to partners in this type of vehicle, some states such as California and New York allow only certain licensed professionals to form LLPs.

Pass Through Taxation of Profits

A limited liability partnership is taxed similar to a business formed under the partnership and sole proprietorship organizational structures by a process called pass-through taxation. The profits of the LLP are not taxed at the level of the LLP but instead are "passed through" to the partners to be reported on their individual tax returns. This prevents the double taxation that occurs in corporations where profits are taxed at the company and shareholder levels.

Considerations

Formation of a business LLP is typically considered by professional groups, such as lawyers, accountants and financial advisers. As part of running an LLP business, partners have to report annually to the state they are registered in to update LLP information. They may also be required to pay franchise taxes.

Warning

There are certain actions not covered by the limited liability protection shield provided under the LLP structure, leaving owners personally and financially responsible for the damages. Some of these actions include committing fraud and personally guaranteeing debts. Also, all partners are liable for the general obligations of the LLP, such as business loans and operating expenses. Each partner is responsible for the actions of his employees.

Interest Deductions

If the LLP takes out loans to benefit the partnership, the borrowed money can generate interest deductions. Each partner can deduct the interest payments on the loan as a business expense on his personal tax returns.

Depreciation Deductions

LLPs have a business standing similar to a corporation, which makes it possible for them to purchase property for the business. This property may include company vehicles or commercial space in which to run the business. As depreciation occurs, property loses value over time. This depreciation becomes deductible over time as well. For example, a company vehicle kept by a LLP for several years allows the partners of the LLP to deduct an annual depreciation cost from tax returns for the life of the vehicle.

Operation Expense Deductions

Operational business expenses, such as Internet access, partnership health insurance policies or business phone bills offer tax benefits. Each partner in a LLP can deduct maintenance and operational costs from personal tax returns. Other tax deductions may include vehicle purchase sales tax on a new vehicle--only for the year in which the vehicle is bought--and costs to install energy-savings methods to the business location.

10.0 Comparisons of LLP with LP and Sociétés en Commandite Simple

Below follows a comparison of the LLP model with existing vehicles which may have similar characteristics as a LLP. The vehicles chosen for the current study are the Société en commandite simple (SCS) and the Limited Partnership (LP). Such comparison is essential in order to avoid any contradiction in the law and to demarcate the LLP from those vehicles.

Structure Feature	Société en commandite simple (SCS)	Limited Partnership (LP)	Limited Liability Partnership
Formation	<p>1. The extract of the deed of SCS must contain:</p> <p>i. If applicable, matrimonial regimes of the commandités</p> <p>ii. The amount of the supplied values / to provide to the partnership</p> <p>2. The extract is signed either by a notary (public document) or by the members (private deed)</p>	<p>1. LP has legal personality when it is registered and it shall have continuous and successive existence until it is dissolved but it can be provided otherwise.</p> <p>2. All LP shall have a Partnership agreement which shall be binding on the parties.</p> <p>3. Every LP shall have a registered office in Mauritius even if it is not its place of business.</p>	<p>LLP has a legal personality</p>
Partners	<p>1. Two distinct categories of partners:</p> <p>i. commandités : traders and officials indefinitely and severally liable for the debts of the société</p> <p>ii. commanditaires:</p>	<p>1. There shall be a Limited partner and a general partner.</p> <p>2. An individual, a body corporate or an unincorporated body, formed or registered with or without liability</p>	<p>1. Has a single type of partner, the Limited Partner.</p> <p>2. Similar to the LP, an individual, a body corporate or an unincorporated body, formed or registered</p>

Structure Feature	Société en commandite simple (SCS)	Limited Partnership (LP)	Limited Liability Partnership
	<p>responsible only to the extent of their contribution</p> <p>2. The maximum number of partners is not fixed by law: the SCS to consist of at least one commandité and one commanditaire.</p> <p>3. It is to be noted that the status of commandité and commanditaire may not be cumulated in the same partner in a SCS</p>	<p>in Mauritius or elsewhere, including société, partnership or any bodies can be a LP or GP. For GP, a trust is also included in this definition.</p> <p>3. A GP shall be liable to all the debts of the LP without limitation whereas a LP shall be liable only to the amount contributed in the LP.</p> <p>4. At least one GP shall be resident or incorporated in Mauritius and a LP shall at all times have an agent with a registered office in Mauritius.</p>	<p>with or without liability in Mauritius or elsewhere, including société, partnership or any bodies can be a partner.</p>
Contribution	<p>1. Contributions may be in kind, in cash or in industry.</p> <p>2. Only commandités can make contributions in industry.</p>	<p>LP can contribute by money, loans, other property or services and non cash contribution is also allowed and it should be inserted in the partnership agreement.</p>	<p>Partners contribute by money, loans, other property or services and non cash contribution is also allowed and it should be inserted in the partnership agreement.</p>
Name	<p>1. Composed of the name of all the les commandités</p>	<p>1. A LP's name shall be followed by LP or</p>	<p>A LLP's name to be followed by LLP or</p>

Structure Feature	Société en commandite simple (SCS)	Limited Partnership (LP)	Limited Liability Partnership
	<p>or the name of one or more of them followed by the words « et compagnie ».</p> <p>2. A commanditaire whose name is included in the name respond indefinitely and jointly and severally the social debts.</p>	<p>Limited Partnership</p> <p>2. It may contain the name of a GP or derivation thereof</p>	<p>Limited Liability Partnership</p>
Obligation of Partners	<p>1. In principle, all commandités are managers unless otherwise specified in the statutes.</p> <p>2. Non-partners can be designated as Manager.</p> <p>3. A commanditaire cannot participate in the external management of the company.</p> <p>4. The commandité shall be jointly and indefinitely liable for social debts/liabilities which may arise.</p> <p>5. Collective decisions are taken under the conditions laid down in the statutes.</p>	<p>1. A person can be admitted or cease to be a partner at the time which is provided in the partnership agreement.</p> <p>2. A partner shall not have any pre-emptive rights unless otherwise provided</p> <p>3. A person can be both a LP and a GP</p> <p>4. A partner can be a creditor of the LP.</p>	<p>LLP's members have a collective ("Joint") responsibility, to the extent that they may agree in an "LLP agreement", but no individual ("several") responsibility for each other's actions.</p>

Structure Feature	Société en commandite simple (SCS)	Limited Partnership (LP)	Limited Liability Partnership
		<p>5. A partner can pay an amount to discharge him from part or the whole of his partnership liability for a partnership obligation</p> <p>6. A debt or obligation contracted by a GP in the course of business engage the LP</p> <p>7. Partners have a duty of good faith</p>	
Dissolution	<p>1. After the death of one of the commandités, if he is not replaced by another commandités (within a period of a year)and assuming that it leaves only minor heirs, dissolution of right.</p> <p>2. Bankruptcy, prohibition to pursue a commercial occupation, incapacity of a commandité</p> <p>3. SCS continues despite death of a commanditaire</p>	<p>1. A LP shall be dissolved where:</p> <p>i. it has been specified in partnership agreement</p> <p>ii. expiry of a fixed term</p> <p>iii. there is an agreement of the majority GP</p> <p>iv. death, legal retirement, resignation, removal, bankruptcy of a GP. This is subject to any other provision in the agreement which allows the other general partners to continue the LP or if any partner is appointed</p>	<p>A LLP shall be dissolved inter alia where:</p> <p>i. it has been specified in partnership agreement</p> <p>ii. expiry of a fixed term</p> <p>iii. upon a court order</p>

11.0 List of issues to consider

11.1 Use of the LLP structure

- Whether to restrict the use of the LLP structure to professionals only?

11.2 Registration Requirements

- Whether to allow a partner of a limited liability partnership to pay for his contribution in kind, as long as the information is properly disclosed in the registration document?
- Whether a limited liability partnership should be required to include the words “Limited Liability Partnership” or the abbreviation “LLP” in its business name and letterheads?
- Whether to limit the number of partners in the Limited Liability Partnership?

11.3 Disclosure and Reporting Requirement

- Whether a limited liability partnership should be required by law to have its accounts audited and filed with the regulators? Whether the law should require a limited liability partnership to prepare financial statements that comply with the prescribed accounting standards?

11.4 Liability of a partner

- Whether while a partner in a limited liability partnership will not be personally liable for the malpractice of other partners in the firm, the partner who is negligent and fraudulent should be subject to unlimited personal liability according to general principles of law?

11.5 Dissolution and winding up

- Whether to agree that the death or bankruptcy of a partner should not automatically dissolve the limited liability partnership?
- Whether the Court should not be allowed to wind up a limited liability partnership if it is satisfied that: (a) the limited liability partnership is unable to carry on business in conformity with the partnership agreement; or (b) it is equitable to do so?

Whether a limited liability partnership should be allowed to wind up voluntarily if all the partners agree to do so? Whether the law need not prescribe a procedure for voluntary winding up?

11.6 Financial provision for creditors

- Whether a limited liability partnership must maintain arrangements with one or more banks or insurance companies to pay a certain amount to the person responsible for winding up the

affairs of the limited liability partnership upon its dissolution, for the benefit of creditors of the limited liability partnership?

11.7 Professional Indemnity Insurance

- Whether there should be mandatory requirements for professional indemnity insurance when professionals make use of the LLP structure? If yes, how can this be implemented?

12.0 Way Forward

In the Budget Speech presented by the Vice Prime Minister and Minister of Finance for the year 2013 it has been stated that in order to consolidate the geographical and product diversification of the sector a Limited Liability Bill will be introduced. The present project has been entrusted to the FSC in line with its statutory objectives to study new avenues for development in the financial services sector, to respond to new challenges and to take full advantage of new opportunities for achieving economic sustainability and job creation.

The FSC is giving due effect to its policy of consultation and dialogue with stakeholders and hence the reason for :

- (a) the presentation of this concept paper
- (b) establishing a Consultative Committee
- (c) seeking from participants to the presentation views in relation to the Concept paper.

in order to proceed with the drafting of the Limited Liability Partnership Bill.

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